

\*\*E-Filed 8/30/2007\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PHASE FORWARD INCORPORATED, a  
Delaware Corporation

Plaintiff,

v.

MARY NOEL ADAMS, individually and d/b/a  
PHASE FORWARD,

Defendants.

Case Number C 05-4232 JF (HRL)

ORDER<sup>1</sup> DENYING REQUEST FOR  
RECONSIDERATION OF ORDER  
DENYING SUMMARY JUDGMENT

Defendant seeks reconsideration of this Court's Order of July 24, 2007 ("Order") denying Defendant's motion for summary judgment as to Count VIII of Plaintiff's Complaint. In relevant part, the Order denied Defendant's motion to affirm a decision of the Trademark Trial and Appeals Board ("TTAB"). Defendant's request for reconsideration is procedurally deficient because Defendant did not first seek leave to file the request as required by Local Rule 7-9(a). Setting aside Defendant's procedural error, this Court will deny the request because Defendant

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 has not identified a cognizable basis for reconsideration. *See* Local Rule 7-9(b)(2).

2 When, as in the instant case, new evidence is introduced after a ruling by the TTAB, the  
3 Court's review of the TTAB's ruling is de novo, with deference given to the TTAB's findings.  
4 *See Nike, Inc. v. Nikepal Int'l, Inc.*, No. 2-05-CV-1468-GEB-JFM, slip op., 2007 WL 609864, at  
5 \*5 (E.D. Cal. Feb. 27, 2007) *citing* *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 674 (7<sup>th</sup>  
6 Cir. 2001). Here, Plaintiff has introduced new evidence, including evidence of confusion, new  
7 deposition testimony, and client lists. If "divergent ultimate inferences may reasonably be  
8 drawn" from the new evidence and the inferences bear on the TTAB's decision, summary  
9 judgment is improper. *Nike, Inc.*, 2007 WL 609864 at \*5, *citing* *Miller v. Glen Miller Prods.*,  
10 *Inc.*, 454 F.3d 975, 988 (9<sup>th</sup> Cir. 2006). Accordingly, the request for reconsideration is denied.

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12 IT IS SO ORDERED.

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14 DATED: August 30, 2007

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JEREMY FOGEL  
United States District Judge

1 This Order has been served upon the following persons:

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